XO Pennsylvania, Inc.	#1 Interconnection	Number porting refusal/delays.	Comments, p.1
XO Pennsylvania, Inc.	#2 Non-discriminatory Access to Network Elements	Ordering (incomplete FOCs) and provisioning Inadequate VZ training on GUI. CSGS ordering system unreliable. No info on rejected orders. Missed intervals. Availability of EELs.	Comments, p.4 Comments, p.5 Comments, p.5 Comments, p.5 Comments, p.6 Comments, p.6
XO Pennsylvania, Inc.	#8 White Pages	Inaccurate listings .	Comments, p.10
XO Pennsylvania, Inc.	#11 Number Portability	Number porting refusal/delays.	Comments, p.1
Office of Consumer Advocate		VZ must drop appeals concerning competitive conditions.	Comments, pp.5-17
Office of Consumer Advocate		Competition is not firmly established.	Comments, pp17-18
Office of Consumer Advocate	#8 White Pages	Failure to list CLEC customers in White Pages must be resolved.	Comments, p.18
Office of Consumer Advocate		VZ has not thoroughly opened its operations to competition concerning digital equipment and facilities. Access to loop information. Unbundling of DSLAM elements.	Comments, p.23 Comments, p.25 Comments, p.26
Office of Trial Staff	#4 Unbundled Local Loops	Hot cuts (complaints).	Comments, pp.4-5
Office of Trial Staff	#8 White Pages	White pages listings - Errors and omissions.	Comments, p. 6
Office of Trial Staff	#14 Resale	Embargo on new connects (complaints).	Comments, p.9

RESPONSE OF SPRINT COMMUNICATIONS COMPANY L.P. AND THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA TO IN-HEARING DATA REQUEST NUMBER 3 DATED MARCH 1, 2001, SUBMITTED IN DOCKET M-00001435 BEFORE THE PA PUC (PA-271)

REQUEST:

MR. LOWE: "I'd have to check. I believe that the one per LATA is something that we . . . have worked that out in other states where there is more than on access tandem, but we do it by saying, all right, if you want us to carry the traffic from this access tandem over to the other access tandems so that it can be distributed to the end offices that subtend that tandem, . . . we'll do that, but we're going to charge you the UNE transport to get there. So that variation I know we have in interconnection agreements. It's not preferred for us. . . . [I]t is something that we have agreed to I know in other states and I have to confirm whether it works in Pennsylvania right now." (Tr. 317-318)

JUDGE WEISMANDEL: Can you provide that information also? (Tr. 318)

MR. MARINKO: "If I may, there was a modified GRIPs proposal in the Focal proceeding, and there were four main parts to it. Let me read the first one just to see what your concern might be with that. It states, 'In LATAs in which Focal and Bell have existing interconnection points, there respective interconnection points will be retained. However, Bell may request and Focal shall provide within a commercially reasonable period of time a Focal interconnection point at on or more Bell Atlantic tandems in the LATA.' What specific problem do you have with that proposal? . . . What specific problems would you have I'd have to check. I believe that the one per LATA is something that we . . . have worked that out in other states where there is more than on access tandem, but we do it by saying, all right, if you want us to carry the traffic from this access tandem over to the other access tandems so that it can be distributed to the end offices that subtend that tandem, . . . we'll do that, but we're going to charge you the UNE transport to get there. So that variation I know we have in interconnection agreements. It's not preferred for us. . . . [I]t is something that we have agreed to I know in other states and I have to confirm whether it works in Pennsylvania right now. (Tr. 310)

MS. MARTIN: "The opinion and order then to look at in terms of the Focal interconnection agreement is the opinion and order entered August 17, 2000. . . at Docket Number A-310630F0002." (Tr. at 320)

MS. MARTIN: "But the most recent Commission order at this docket, . . . in responding, is entered at the same docket number . . . and the order entered date is January 29, 2001." (Tr. at 320)

SPRINT RESPONSE:

Sprint will respond to the three positions referenced in the Focal/Verizon interconnection proceeding at Docket Number A-310630F0002:

(A) Focal's compromise proposal, as appearing at pages 8-10 of the August 17, 2000 Order;

(B) Verizon's modified proposal, as appearing at page 7 of the August 17, 2000 Order; and

(C) The Commission's adopted language, as appearing at page 5 of the January 29, 2001 Order.

By way of introduction, Sprint's main objection with all three proposals is with the unique Verizon "Interconnection Point" ("IP") concept. Briefly, Verizon wants to take the commonly understood Point of Interconnection ("POI") definition of connecting at any point of technical feasibility and split off the transport billing element via the creation of an IP. Per Verizon, the IP is usually a Verizon end office, but can be a Verizon tandem switch as noted above by Mr. Rowe from Verizon. (Tr. 317-318.) The consequence of adopting Verizon's IP concept means that Verizon mandates the location of the IP, thereby allowing Verizon to deliver its traffic to its end office, or tandem, and then Sprint would have to take the traffic from there to its POI.

Thus, in Sprint's view, while each above-referenced proposal has certain redeeming features, all three fundamentally embrace this Verizon-imposed network interconnection procedure of an IP that would unfairly increase Sprint's interconnection costs and would improperly reduce Verizon's costs. In sum, the use of an IP remains unduly restrictive and remains inconsistent with federal law and regulations which require that an ILEC must allow interconnection at any technically feasible point of interconnection. (*See*, Sprint Comments at 13-17.)

A. Sprint's specific position as to the Focal compromise proposal

The Focal proposed language creates a "primary" traffic route and an "overflow" traffic route, and uses a demarcation level of 200,000 MOUs per month as to distinguish between the two types of traffic. (Para. II.A) Overflow traffic would be routed through the Verizon tandem, whereas primary traffic is subject to "reasonable best efforts" at the Verizon end office.

At this time, Sprint opposes any requirement that would route traffic to the central office or end office. Sprint would support use of the tandem for all traffic (without distinction between "primary" or "overflow") as a compromise measure.

Moreover, in Paragraphs II.B. and D. of the Focal language, the use of an IP is retained. Indeed, the IP must be a "mutual" interconnection point. Moreover, the language proposes that parties "work cooperatively" to establish a physical IP within <u>every</u> rate center. (Para. II.D.iii.) This measure still accords to Verizon authority to dictate where a CLEC may interconnect to Verizon's network.

Finally, in Paragraph III.B. of the Focal language, the use of an assumed 50/50 arrangement for tandem interconnection trunks may not track with actual traffic patterns and the party with lesser amount of traffic will bear a greater financial burden associated with traffic imbalances.

B. Sprint's position as to Verizon's modified proposal

For the reasons set forth above, the Verizon modified proposal utilizes IPs (existing or future) and thereby enables Verizon to dictate where a CLEC can interconnect with Verizon via a "request" at "one or more" Verizon tandem within a LATA. While the tandem/LATA approach is certainly more reasonable than the requirement that the CLEC take the traffic to the end office, the language contravenes federal law by enabling Verizon to dictate where the CLEC should undertake an interconnection. Indeed, subpart (d) gives Verizon the "right to move" IP to an end office if the CLEC is collocated at the Verizon end office.

C. Sprint's position as to the Commission's adopted language

At this time, Sprint opposes any requirement that would route traffic to the central office or end office. Sprint would support the use of the tandem for all traffic (without distinction between "primary" or "overflow") as a compromise measure. However, as noted above, Sprint opposes the assumed 50% cost responsibility included in this language. The use of an assumed 50/50 arrangement for tandem interconnection trunks may not track with actual traffic patterns and the party with lesser amount of traffic will bear a greater financial burden associated with traffic imbalances.

RESPONSE OF SPRINT COMMUNICATIONS COMPANY L.P. AND THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA TO IN-HEARING DATA REQUEST NUMBER 1 DATED MARCH 1, 2001, SUBMITTED IN DOCKET M-00001435 BEFORE THE PA PUC (PA-271)

REQUEST:

Response to Verizon policy relating to resale of vertical features. (2-16 tr p.123 line 12).

RESPONSE:

Sprint Communications Company L.P. and The United Telephone Company of Pennsylvania ("Sprint") addressed the resale of vertical features issue in its Comments filed on February 12, 2001 ("Sprint February 12, 2001 Comments"), in this docket. *See* Sprint February 12 Comments at 35-50. In addition to those initial comments, Sprint provides the following:

Verizon refuses to resell vertical features in violation of section 251(c)(4) of the 1996 Telecommunications Act. Section 251(c)(4) prohibits "unreasonable or discriminatory conditions or limitations on resale." 47 U.S.C. § 251(c)(4)(A). Also, the Federal Communications Commission ("FCC") has concluded that resale restrictions are "presumptively unreasonable." *FCC Local Competition First Report and Order* ¶ 939.

Verizon seeks to justify its restriction based, in part, on the fact that it does not offer vertical features on a stand-alone basis to its retail customers. This fact, however, fails to establish that the restriction is reasonable.

First, nothing in the 1996 Act or the FCC's rules or orders expressly exempts vertical features from the resale requirement. The FCC has held that "[g]iven the goal of the 1996 Act to encourage competition, we decline to limit the resale obligation with respect to certain services where the 1996 Act does not specifically do so." *Id.* at ¶ 956.

Second, Section 251(c)(4)(A) imposes on Verizon the duty to offer for resale "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. *See FCC Local Competition First Report and Order* ¶ 871 (citing 47 U.S.C. 251(c)(4)(A)). Verizon must establish a wholesale rate for each retail service that: (1) meets the statutory definition of a telecommunications service; and (2) is provided at retail to subscribers who are not telecommunications carriers. *Id.* Also, according to the FCC, [I]f a service is sold to end users, it is a retail service..." *Id.* at ¶ 951. Moreover, the FCC

RESPONSE OF SPRINT COMMUNICATIONS COMPANY L.P. AND THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA TO IN-HEARING DATA REQUEST NUMBER 1 DATED MARCH 1, 2001, SUBMITTED IN DOCKET M-00001435 BEFORE THE PA PUC (PA-271)

describes vertical features as providing "end users with various services such as custom calling, call waiting, call forwarding, caller ID and Centrex. *New York 271 Order,* 15 FCC Rcd. 75, note 1070 (Dec. 22, 1999). It is irrefutable that vertical features are a telecommunications service. It is also indisputable that Verizon offers vertical features at retail to its non-carrier customers. In fact, vertical features are predominantly offered to, and taken by, end users.

Third, the fact that it provides vertical features with dial tone is not relevant and does not alter the essential retail nature of these services. Local dial tone and vertical features are two separate retail offerings. These services are tariffed separately, priced separately and billed separately. To rule otherwise would permit Verizon to avoid the statutory resale obligation by bundling all of their retail products with dial tone, thereby eviscerating the resale provisions of the 1996 Act. Verizon's attempt to tie two separate offerings together is evidence of its market power and its intent to preserve its dominant position in the vertical services market.

Fourth, Sprint is requesting that Verizon resell vertical features to Sprint. Sprint is not requesting that Verizon disaggregate vertical services into more discrete retail services. Thus, ¶ 877 of the *FCC Local Competition First Report and Order* cited by Verizon is not applicable to the current situation.

Fifth, while it is undisputed that some form of dial tone is necessary for vertical features to function, Verizon fails to acknowledge that no justification exists for the requirement that the *same carrier* must be the provider of *both* dial tone and vertical services for the wholesale discount to apply when these services are sold separately and are two different services.

Sixth, the fact that enhanced service providers purchase these services does not alter the essential nature of these services as separate retail services, and does not alter Verizon's statutory resale obligation. Vertical services are predominantly offered to, and taken by, end users. Also, the fact that Verizon is not offering a discount to enhanced service providers in no way alters Verizon's statutory resale obligations with respect to a wholesale discount.

Seventh, the FCC's *Advance Services Second Report and Order* cited by Verizon does not apply to the current situation. The parties in that proceeding did not dispute that advanced services made directly available to business and residential end-users are provided at retail. The only dispute was whether advanced services sold to Internet Service Providers pursuant to volume and

RESPONSE OF SPRINT COMMUNICATIONS COMPANY L.P. AND THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA TO IN-HEARING DATA REQUEST NUMBER 1 DATED MARCH 1, 2001, SUBMITTED IN DOCKET M-00001435 BEFORE THE PA PUC (PA-271)

term discount plans are subject to the discounted resale obligation. *See Advanced Services Second Report and Order*, CC Docket No. 98-147, at ¶ 10 (November 9, 1999). The question in this instance is whether vertical features made directly available to business and residential end-users are provided at retail. The answer to this question is undeniably yes. The issue here in no manner involves volume or term discount plans. Also, unlike the xDSL service in the *Advanced Services Order*, this current situation involves a telecommunications service (i.e., vertical feature) that Verizon sells to end users. The current situation does not involve a service that Verizon designed for, and intends to sell, to third parties who in turn will sell to end users.

Eighth, Sprint has moved the Massachusetts Department of Telecommunications and Energy to reconsider its decision relating to the vertical features issue. Sprint's motion is still pending.

Ninth, Verizon wrongfully asserts that if an issue is subject to arbitration, then it cannot be raised in a 271 proceeding. Sprint's ability to raise an issue in an arbitration proceeding is not relevant to whether Sprint can raise an issue in the context of a 271 proceeding. These proceedings are not mutually exclusive. Thus, Verizon cannot exclude evidence in a 271 proceeding simply because a party can raise the issue in an arbitration proceeding, and vice versa. Indeed, every issue related to the competitive checklist is a possible arbitration issue. Also, Sprint has not raised every possible arbitration issue in this 271 proceeding. For instance, in Massachusetts Sprint filed for arbitration of 18 disputed issues. In this Pennsylvania 271 proceeding Sprint has raised only those potential arbitration issues directly related to the competitive checklist. Moreover, Sprint has no control over the timing of the 271 proceeding. Just because Verizon files its 271 application with the Commission prior to Sprint raising it in an arbitration is not justification for exclusion of that issue. Sprint may well file for arbitration in Pennsylvania, but it is currently continuing negotiations in an effort to avoid it. The relevant question is whether the issue relates to the 271 competitive checklist. It is incontrovertible that resale is a checklist item. Lastly, the Commission's consultative report to the FCC is not an adjudication because the FCC is the administrative agency with the statutory authority to determine whether Verizon meets the requirements of Section 271(c). *See Procedural Order* entered November 30, 2000. Therefore, Verizon's claims that resale of vertical features is not a question of the checklist and that Sprint is seeking to somehow "circumvent proper procedures" are completely unfounded.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Consultative Report on Application of Verizon Pennsylvania Inc., for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania	))))	Docket No. M-00001435

PUBLIC VERSION

FINAL COMMENTS OF COVAD COMMUNICATIONS COMPANY

Covad Communications Company ("Covad"), through undersigned counsel, hereby submits its Final Comments in the above-captioned case.

INTRODUCTION

Advanced Services competition in Pennsylvania is not where it should be, and Verizon's poor performance is at the root of the problem. Verizon claims that there are 50,000 loops in Pennsylvania offering Advanced Services:

> Specifically in Pennsylvania as of December 31st, there were approximately 50,000 DSL loops in Pennsylvania of which 13,700 were stand-alone DSL loops, 36,900 were line share loops.

February 28, 2001 Transcript (Stern), at 11. But those claims ring hollow. **BEGIN PROPRIETARY END PROPRIETARY** of the line shared loops to which Verizon refers are operated by Verizon's data affiliate, Verizon Advanced Data, Inc. ("VADI"), and hardly demonstrate that data competition exists in Pennsylvania. The remaining 13,700 stand-alone xDSL loops are barely evidence of much competition;

that number should be significantly higher given the size of Pennsylvania and the demand for broadband services within it.[1]

As Covad has shown throughout this proceeding, and will show below, Verizon's performance has impeded the development of broadband competition. The Commission should withhold its recommendation in favor of Verizon's 271 application until Verizon demonstrates real performance improvements.

ARGUMENT

I. 47 U.S.C. § 271(c)(2)(B)(i) – (xiv)

A. Collocation Power – 47 U.S.C. § 271(c)(2)(B)(ii)

1. Pricing Issues

In its initial declaration in this proceeding, Covad complained that Verizon was double charging for collocation power. Covad Declaration, at ¶ 82. Specifically, Covad asserted that Verizon's rate structure charged Covad for 80 amps when it ordered only 40.[2] *Id.* As of the date of Covad's declaration, this issue remained unresolved between the parties in the Commission's collocation pricing case. *See* PUC Docket Nos. R-00994697 & R-00994697C0001; Covad Declaration, at ¶ 82 n. 20. On March 27, 2001 and in response to joint complaint of Covad and AT&T at the New York Public Service Commission, Verizon filed tariff amendments in New

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1 Moreover, there is reason to believe that Verizon's estimate of stand-alone xDSL loops is incorrect. Verizon failed to respond fully to In-Hearing Data Request No. 40, which sought a breakdown of the 13,700 loop estimate. Verizon merely provided a list of carriers that "currently have data loops in place in PA today or have placed DSLAM equipment for ordering data loops." As the ALJs made clear, the failure to respond to an In-Hearing Data Request would properly give rise to an adverse inference.

2 Verizon originally triple charged Covad for collocation power, but dropped some of these charges as part of the settlement in Docket Nos. R-00994697 & R-00994697C0001.

York that would charge Covad (and other CLECs) for the total load amps requested (*i.e.*, CLECs requesting 40 amps would be billed at 40 amps). Verizon filed these amendments in Massachusetts on April 6, 2001 and finally in Pennsylvania on April 11, 2001.

Covad is generally pleased that Verizon has recognized the discriminatory nature of its previous charging scheme for collocation power and has taken steps to correct the regime on a going-forward basis.[3] Nevertheless, Verizon has made no mention of correcting its past over-charges. The Commission should require Verizon to refund those collocation power charges that Verizon collected under its previous triple-charging scheme (prior to the collocation cost settlement) and under its current double-charging scheme in order to remedy the competitive harm that Verizon's over-charging practices have caused.

Verizon's tariff filing also raises some new questions. First, Verizon proposes to change the way in which power feeds serving collocation arrangements are configured, by lowering the fuse sizes slightly. In making this proposal, Verizon suggests that CLECs somehow misordered collocation power in the first. Nothing could be further from the truth, and the Commission should reject Verizon's proposal in this regard. Second, Verizon proposes to conduct random inspections of power arrangements serving CLECs and unilaterally levy penalties on CLECs drawing more than their requested power load. Verizon's proposed penalties are unlawful and unnecessary, and in any event Verizon is the last party that should be deciding who penalize for drawing more power than requested. Moreover, the inspections should be jointly-conducted with the relevant CLEC. Covad addresses these issues in detail in the next subsection.

a. Verizon Incorrectly Suggests that CLECs Misordered Collocation Power, and There Is No Need to Reconfigure Existing Power Arrangements

As Covad explained in its initial declaration, Verizon has traditionally required collocators to order two power feeds each fused at 1.5 times the total requested power draw. Covad Declaration, at ¶ 82 n. 20. So, for example, if Covad requested a total of 40 load amps,[4] Verizon would provide 2 feeds each fused at 60 amps (and bill Covad for 40 amps on each feed for a total of 80 amps).[5] *Id.*

Now, Verizon has proposed that, when Covad orders a total of 40 load amps, Covad should request 20 amps on each of two feeds and request that these be fused at 2.5 times the drain (resulting in two feeds fused at 50 amps). *See* Proposed Amendment to Verizon Tariff No. 218 ("Proposed Tariff Amendments"), at Original Sheet 22A. Verizon states that each of these feeds will be able to handle the total power requirements of Covad's equipment should the other one fail. *Id.* Verizon indicates that, if Covad follows this procedure, Verizon will bill for only 40 amps, rather than 80 amps (as was previously the practice). *Id.* Since all of Covad's

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[3] Covad is not pleased that Verizon has set the effective date for its new collocation power charging scheme in Pennsylvania to be May 11, 2001, when its sister ILEC in New York made the new rate structure effective there on March 28, 2001.

[4] "Load amps" are the number of amps that a collocator will use.

[5] In the telecommunications industry, it is standard to provide power over two feeds in case one fails. In fact, Verizon's collocation application tells applicants that requesting a quantity of one feed will result in an "A&B feed pair" (*i.e.*, two feeds) being provisioned, each with the ability to handle the power requested by the applicant. *See* Covad Hearing Exhibit No. 2; March 2, 2001 Technical Conference Transcript, at 111.

collocation arrangements in Pennsylvania were fused -- based upon the unambiguous directions in Verizon's collocation application -- at 1.5 times the maximum requested load amps (*i.e.*, fused at 60 amps for a 40 amp load), the fuses on each feed are slightly too large for Verizon's new charging scheme in which fuses are set at 2.5 times half of the maximum load (*i.e.*, at 2.5 times 20 amps when the maximum load for both feeds is 40 amps). For that reason, Verizon has proposed that Covad (as well as all other CLECs) replace the fuses in their collocation power arrangements with smaller ones. *See* Proposed Tariff Amendments, at Original Sheet 22C. In addition, Verizon has suggested that the need to replace these fuses stems from CLECs having misordered collocation power in the first place.

Covad opposes replacing the fuses in all of its collocation arrangements. First, it is the worst form of revisionist history for Verizon now to suggest that Covad originally misordered collocation power.[6] Covad requested on each and every Verizon collocation application 40 load amps of collocation power to be distributed equally between two feeds. *See* Covad Declaration, at ¶ 81. It was Verizon's decision (over the protest of Covad, it should be noted) to treat Covad's request as one for 40 load amps on each feed. *See id.*, at ¶ 82. Similarly, the fuses serving Covad's collocation arrangements are sized exactly according to the instructions on Verizon's collocation application. Indeed, Verizon's engineers themselves selected the fuse sizes. Consequently, Covad did not misorder collocation power, and Verizon's suggestion that Covad did is nothing more than a feeble attempt to cover Verizon's own tracks. Verizon has been aware of Covad's claim that the collocation power rate structure results in over-charging for at least two years and only now advances the argument that Covad was misordering power all along.[7] The Commission should therefore deny Verizon's effort to force Covad and other CLECs to re-fuse their collocation arrangements.

Second, there is no technical reason to lower the fuse sizes in existing collocation arrangements. Verizon's new charging scheme for collocation power will work fine with fuses that are slightly larger than 2.5 times half of the maximum load amps requested.

Third, replacing the fuses would be costly for Covad, because its personnel would have to be on-site at the time of any such re-fusing. Verizon has not made any proposal to mitigate these costs to Covad (and other CLECs).

Fourth, changing the fuses in every existing collocation arrangement poses a risk of disrupting customers' service. Under no circumstances should the Commission allow Verizon to force upon CLECs technically-unnecessary changes to their collocation arrangements that very easily could lead to residential and business subscribers losing service.

b. The Inspections Should Be Jointly Conducted and Verizon's Penalty Provisions Are Unlawful and Unnecessary and Would

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6 Despite having every opportunity to do so, Verizon made no such allegation at the technical conference on collocation power in this case.

7 The Commission should be aware that Covad is suing Verizon under an antitrust theory in Federal District court for the District of Columbia. In that suit, Covad has alleged (in a complaint filed about two years ago) that Verizon's previous power charging scheme was anti-competitive and unlawful. That claim is currently pending before the Court. In that case, Verizon has not made the argument that Covad simply misordered collocation power, as it certainly would have before now in order to dispose of such a very serious allegation against it.

Give It Unilateral Authority to Levy Penalties

Verizon proposes to conduct random, unannounced inspections in order to identify CLECs which are drawing more power than requested (that is, supposedly stealing power). Proposed Tariff Amendments, at Original Sheet 22B. Verizon would charge CLECs on an individual case basis ("ICB") for conducting these inspections. *Id.* For CLECs found to be drawing 10% more than the total power requested, Verizon proposes unilaterally to impose a penalty equal to nine times the monthly power rates. *Id.*

Covad opposes these proposals on several grounds. First, the penalty provisions are not intended merely to compensate Verizon for the excess load amps drawn. Instead, Verizon intends the penalties to perform a punitive function to punish and harass competitors whose equipment may have unexpectedly experience a momentary power drain that is 11% higher than expected. Penalties should be reserved for instances in which competitors blatantly and repeatedly misrepresent the amount of power they intend to draw. In the absence of such conduct, Verizon should be entitled only to compensation for excess power provided to CLECs.

Second, Verizon cannot substantiate these penalties with any cost study, nor can it point to any Commission order approving such penalties as cost-based. As the Commission knows, collocation rates must be cost-based under 47 U.S.C. § 252(d)(1). Verizon cannot make that showing for its proposed penalties.

Third, the Commission should not permit Verizon unilaterally to decide when to impose penalties (in the extremely limited cases when penalties would be appropriate). Verizon is hardly a disinterested party on these issues. The Commission should reserve for itself the right to judge when penalties should be levied against CLECs.

Fourth, any inspections to determine the power being drawn by collocation arrangements should be jointly-conducted by the relevant CLEC and Verizon to ensure that they are done fairly. For instance, the parties should test both feeds to determine the total power that the collocator is drawing (because if one feed is down, the other will carry the entire load and appear to exceed Verizon's power threshold of one-half of the maximum load per feed).

Fifth, giving Verizon the right to charge via ICB pricing arrangements for unrequested inspections *after the fact* provides enormous power to Verizon. Verizon is in the position to determine whether a charge applies in the first place, because it decides whether there has been a violation. If Verizon decides that a charge applies, it can then decide how much. The CLEC does not, of course, have an opportunity to decline the inspection if it believes the charges are too high, because the inspection has already occurred – an inspection initiated by Verizon for Verizon's benefit. There is no reason for Verizon to charge ICB rates for routine inspections of the sort contemplated here. If Verizon is allowed to charge at all, the charge should be predetermined on a legitimate cost basis, as the law requires.

The foregoing modifications to Verizon's newly proposed tariff amendments on collocation power are necessary, at a minimum, to comply with Verizon's legal obligations under Competitive Checklist item number two. *See* 47 U.S.C. § 271(c)(2)(B)(ii).

B. Line Sharing – 47 U.S.C. § (c)(2)(B)(iv)

1. Non-Pricing Issues

a. Verizon's Performance

Covad's most important comments on Verizon's line sharing performance are stated in Covad's commercial availability period comments for January and February, 2001, and there is no need to repeat that analysis here. Suffice it to say that Verizon's performance on a number of crucial line sharing metrics is poor, and Covad's own data shows Verizon's performance to be even worse.[8] The disparity between Verizon's and Covad's data appears to be due, at least in part, to Verizon's unexplained exclusions of many data points from its metrics calculations.

It is also important to understand that, with such a small volume of line sharing orders, performance metrics that do not currently show a lack of parity may look entirely different as line sharing volumes ramp up in Pennsylvania over the coming months. After all, as of April 17, 2001, Covad had been able to complete only **BEGIN PROPRIETARY END PROPRIETARY** line sharing orders in Pennsylvania. By contrast, on that same date, Covad had completed **BEGIN PROPRIETARY END PROPRIETARY** line sharing orders in California, Illinois, Michigan, Ohio, and Washington state, respectively. Covad's slow

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[8] Covad's data showed that Verizon's average interval completed for line sharing (PR-2-01) was **BEGIN PROPRIETARY END PROPRIETARY** which Covad calculated using the firm order commitment data as the completion date (a conservative assumption since not all orders

start in Pennsylvania is attributable to the fact that its splitters installed in Verizon central offices were not all commercially operational until March 27, 2001, almost ten months after the FCC's June 1, 2000 deployment deadline. *See* Verizon Hearing Exhibit 18.[9] Because Verizon repeatedly refused Covad's requests to inspect its virtually-collocated splitters (to which Covad normally does not have access), Covad had no way of trouble shooting the problems with the splitters. *See* February 28, 2001 Transcript, at 211-12. Verizon finally relented in late February of this year, and joint inspections of the splitters began on February 28, 2001 and were completed by March 27, 2001. *See* Verizon Hearing Exhibit 18. The parties identified and generally corrected the problems with the splitters, and Covad was able to begin submitting line sharing orders for nearly all of its splitters only during the month of March. *See id.*

To sum up matters, Covad has been able to submit line sharing orders only for approximately the last six weeks. At such an early stage in the deployment and marketing of line sharing, the volumes necessarily will be low and even good results on performance metrics will not say very much about Verizon's ability to provision line sharing in commercially viable quantities. Until Verizon completes substantially more line sharing orders, all that the Commission will have to judge Verizon's performance are some metrics that show poor performance and another set that may

actually complete on the FOC date). *See* Covad Comments on February, 2001 Commercial Availability Period Report, at 6 & Exhibit A.

9 *See* February 28, 2001 Transcript, at 213 (Clancy) ("Let me note that during the FCC summit, what Covad agreed to do in this recertification process was turn off all of its offices and not take any more orders, so we took no more line sharing orders in the offices where we had problems; and in the

show poor performance once volumes increase.[10] That is not much on which to premise any finding by the Commission that Verizon meets Competitive Checklist item number four. *See* 47 U.S.C. § 271(c)(2)(B)(4).

b. Verizon Refuses to Honor the Commission's Line Sharing Arbitration Order

Covad and Verizon arbitrated line sharing issues before the Commission last year, which resulted in an order requiring Verizon, among other things, to provide line sharing collocation augments in 30 business days and to provision line sharing orders in three business days.[11] Verizon has informed Covad that it will not abide by the Commission's order in the absence of contract language between the parties. While Covad disagrees with this position vociferously, Covad has provided Verizon with proposed contract language. *See* Exhibit A (letter of Antony Richard Petrilla of Covad to Steven Hartmann of Verizon, attaching Covad's proposed contract language). Verizon has not responded to Covad's proposal.

In the absence of either Verizon agreeing that the Line Sharing Arbitration Order binds it or the parties agreement on contract language implementing that Order, the Commission cannot recommend Verizon's 271 application to the FCC with the knowledge that the terms and conditions for line sharing are in place. For

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offices where we had not taken orders yet, we turned them off and kept them off until we would get a feedback from Verizon that the office was okay.")

10 The Commission should remember that KPMG did not test line sharing in any respect.

11 *See Petition of Covad Communications Company for an Arbitration Award Against Bell Atlantic – Pennsylvania, Inc., Implementing the Line Sharing Unbundled Network Element; Petition of Rhythms Links, Inc., for an expedited Arbitration Award Implementing Line Sharing*, Opinion and Order, Docket Nos. A-310696F0002 & A-310698F0002, at 17 (entered November 15, 2000).

that reason, Verizon has failed to meet Competitive Checklist item number four. *See* 47 U.S.C. § 271(c)(2)(B)(4).

C. xDSL Loops – 47 U.S.C. § 271(c)(2)(B)(iv)

1. Non-Pricing Issues

Verizon's performance in provisioning and maintaining/repairing xDSL loops remains problematic. Covad has provided detailed comments upon Verizon's reported performance metrics for xDSL loops in the commercial availability period comments for January and February, 2001. While there is no need to repeat that analysis here, there are two points that bear emphasizing.

First, Verizon's performance as measured by PR-6-01, the metric for the percentage of trouble reports filed for xDSL loops within 30 days of installation (PR-6-01), is manifestly awful. In January, PR-6-01 showed that 6.82% of CLECs' loops experienced trouble within 30 days, while only 1.62% of Verizon's loops did. For February, the chasm between Verizon's performance for itself and for CLECs grew even larger, with 7.48% of CLEC loops experiencing trouble right after installation compared to only 1.69% of Verizon's loops.[12]

The PR-6-01 metric is extremely important in the FCC's consideration of a 271 application. The FCC, in both the *New York 271 Order* and the *Texas 271 Order*, determined that this metric is "indicative of the quality of network components

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[12] Covad's own data shows Verizon's performance to be even poorer: Covad calculated PR-6-01 for itself to be **BEGIN PROPRIETARY END PROPRIETARY**. *See* Covad Comments on February, 2001 Commercial Availability Period Report, at 2 & Exhibit A.

supplied by the incumbent LEC." *New York 271 Order*,[13] at ¶ 222 n. 711; *Texas 271 Order*,[14] at ¶ 299. Loops that experience service problems within 30 days of installation likely did not work upon installation, suggesting that the 271 applicant's loop provisioning process is flawed. When the FCC approved Southwestern Bell – Texas's ("SWBT") 271 application in Texas, SWBT provided xDSL loops with only 4% experiencing troubles within 30 days of installation. *Texas 271 Order*, at ¶ 300. Verizon's performance in Pennsylvania is 58% worse than SWBT's on an absolute scale. But the more important point is that Verizon is wildly out of parity, because the PR-6-01 results for February for CLECs are almost four and half times those for Verizon's retail operations (whereas SWBT's results for itself and CLECs were about the same). *See id.*

Second, Verizon appears to have excluded a number of data points from its metrics calculations for xDSL loops. For example, Verizon states in the February commercial availability report that it calculated PR-2-02 and PR-3-10 using 172 and 175 xDSL loops, respectively, provisioned to all CLECs in Pennsylvania. As Covad noted in its comments on that report, Covad, by itself, received **BEGIN PROPRIETARY END PROPRIETARY**[15] xDSL loops from Verizon in February. Verizon obviously whittled the number of data points down to a lower

13 *Application By Bell Atlantic New York For Authorization Under Section 271 Of The Communications Act To Provide In-Region, InterLATA Service In The State Of New York, Memorandum Opinion and Order*, CC Docket No. 99-295, FCC 99-404 (rel. December 22, 1999) ("*New York 271 Order*").

14 *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 (rel. June 30, 2000) ("*Texas 271 Order*").

number, but it has not explained that process. The Commission therefore cannot be confident that the metrics results are valid.

For these reasons, Covad urges the Commission to find that Verizon has not met Competitive Checklist item four. *See* 47 U.S.C. § 271(c)(2)(B)(4).

a. xDSL Loop Prequalification – 47 U.S.C. § 271(c)(2)(B)(iv)

In its initial declaration, Covad explained that there are situations "in which LiveWire has falsely reported certain loops as non-qualifiers." Covad Declaration, at ¶ 53. At that time, Covad stated that, for about 7% of queries to LiveWire, Verizon's response indicates that the loop has a length of zero feet and is non-qualified. *Id.* Because there is no such thing as a zero foot loop, Covad submits a manual loop qualification request and often times finds that the loop is indeed qualified for xDSL service. *Id.* When Covad submitted its initial declaration, Verizon was insisting that the problem with LiveWire would be fixed by June of 2001. *Id.*, at ¶ 54. The status of this issue has changed in two material respects: (1) the percentage of loops affected by the problem has risen to 10-15%; and (2) Verizon no longer claims that it will fix the problem by June of 2001. Verizon does not know when it will have the problem fixed.

In addition, Covad has noticed that responses from Verizon's LiveWire database have become less accurate over time. Increasingly, the LiveWire database has provided incorrect loop lengths. Relying on these results, Covad has attempted to provide service to customers who simply do not have qualified loops. Covad has

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[15] This number represents the total xDSL loops that Covad turned up during the month of

previously raised this issue at the FCC's Line Sharing Summit and in its weekly operations conference calls with Verizon.

Access to accurate xDSL loop prequalification information is essential to any provider of advanced services. The Commission must insist that Verizon correct this problem with LiveWire before recommending Verizon's 271 application to the FCC.

b. Access to Next Generation Digital Loop Carrier for Purposes of Offering xDSL Services – 47 U.S.C. § 271(c)(2)(B)(iv)

In its initial declaration, Covad explained that Verizon does not presently offer a commercially viable method for CLECs to provide xDSL services to end users whose loops are constructed of fiber optic cable and digital loop carrier ("DLC"). Covad Declaration, at ¶ 56. Verizon has suggested that CLECs collocate a traditional DSLAM at the remote terminal serving such end users, but that course of action is not viable, for the reasons set forth in Covad's initial declaration (primarily expense and lack of space in the remote terminal). *Id.*, at ¶ 55 n. 7. Covad has requested that Verizon make available the capabilities of next generation DLC ("NGDLC") to offer xDSL service directly over the fiber portion of loops. *Id.*, at ¶ 66-67. The legal basis for Verizon's obligation to do so is set forth in Covad's initial declaration.[16] *Id.*, at ¶¶ 64-65. While Verizon has discussed the possibility of making NGDLC available for this purpose to a limited degree (through an offering called Packet at the Remote Terminal Service or "PARTS"), Verizon has not made a decision whether to proceed

February, 2001.

[16] Additionally, if Verizon elects to accept functional/structural separation on April 20, 2001, it will be bound to unbundle DSLAMs in the remote terminal, including the DSLAM functionality of NGDLC line cards. *See Re: Structural Separation of Bell Atlantic – Pennsylvania, Inc. Retail and Wholesale Operations*,

with this offering. *Id.*, at ¶ 71. Moreover, there is substantial reason to believe that PARTS will be inadequate for Covad's purposes. For example, PARTS does not make any provision for CLECs to equip Verizon's NGDLC with their own line cards, so that they may offer additional xDSL services besides the vanilla ADSL offering that Verizon proposes.[17] *Id.*, at ¶ 76.

In the structural separation proceeding order, the Commission ordered Verizon to convene a collaborative to discuss NGDLC issues with CLECs (that is, if Verizon opts for functional/structural separation on April 20, 2001).[18] The collaborative should prove to be an excellent vehicle for the parties to establish ground rules for the deployment of xDSL services by CLECs over Verizon's NGDLC. Covad believes that the discussions would be aided if the Commission were to require Verizon to submit a "turn-key" set of contract terms, tariff provisions, ordering procedures, provisioning procedures and technical configurations necessary for competitors to offer xDSL services over NGDLC and from which the parties could begin negotiations in the collaborative. Toward that end, Covad has attached an implementation schedule that it proposed in the Maryland collaborative on January 16, 2001 on these issues.[19] To ensure that Verizon works toward resolving the means by which competitors may offer xDSL services over NGDLC, Covad urges the Commission to require Verizon to complete the

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Opinion and Order, Docket No. M-00001353, at 36 (entered April 11, 2001) ("*Structural Separation Order*").

17 Covad would like to offer more desirable services to end users, such as SDSL (which allows higher speeds than ADSL and provide equal downstream and upstream bandwidth).

18 *See Structural Separation Order*, at 46-47.

collaborative discussions before receiving a positive recommendation on its 271 application.

c. Loop Billing Issues – 47 U.S.C. § 271(c)(2)(B)(iv)

As Covad noted in its initial declaration, Verizon provides CLECs with electronic bills for loops using the Customer Access Billing System ("CABS"), even though it bills for other unbundled network elements, such as collocation and interoffice transport, using the Customer Record Information System ("CRIS"). Covad Declaration, at ¶ 86. While Covad utilizes CRIS, it has not developed CABS capability, in part because Verizon has promised to integrate its billing systems so that Covad can get electronic bills in one format. *Id.*, at ¶ 87. Verizon has not done that, despite having sufficient time to do so, nor has it committed to a date certain by which it could. Covad urges the Commission to require Verizon to implement an integrated billing system for loops and other network elements before bringing its 271 application to the FCC.

II. Metrics, OSS, and the Performance Assurance Plan

A. Are there sufficient incentives to assure post-entry compliance?

Verizon's performance assurance plan ("PAP") is inadequate for two primary reasons. First, the PAP does not compensate CLECs for Verizon's poor performance proportional to their usage of a network element. For instance, if Covad drives 95% of the volume of xDSL loop orders and Verizon's performance on metrics related thereto results in a pay-out, Covad would receive exactly the same

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19 *See* Exhibit B (containing "Proposed Implementation Schedule For Verizon's Broadband

payment as any of the CLECs that make up the remaining 5%. And yet Verizon's poor performance would have damaged Covad much more so than any other of the other CLECs. If anything, this penalty structure gives Verizon an incentive to provide Covad poor performance because, in doing so, Verizon knows that it will not have to make its chief competitor, Covad, anywhere near whole.

Second, the amount of the penalties under the PAP is low. The penalties per metric violated are a maximum of $4,000 per month. While that number increases to $5,000 if Verizon's accepts the Commission's resolution of the structural separation proceeding,[20] and conceivably the number could jump to $25,000 in extraordinary cases, it falls far short of the kind of money that is available under the New York PAP. AT&T Hearing Exhibit 5 compares total pay-outs in New York and Pennsylvania between January and November, 2000. The New York pay-outs dwarf those in Pennsylvania, even though Verizon's performance was likely worse in Pennsylvania. On an annualized basis, Verizon will have paid an estimated $37,744,064 in New York, compared to only $9,192,000 in Pennsylvania. *See* AT&T Hearing Exhibit 5. While Verizon has more lines in New York, the proportional difference in line counts between the states does not justify a four-to-one ratio between PAP payments.

Verizon makes much of the argument that pay-outs under the Pennsylvania PAP are conceivably unlimited. That is, Verizon points to the fact that there is no "cap" upon the Pennsylvania PAP, as there is for the New York PAP. While that

Service Offering (BSO) And Broadband Virtual Offering (BVO)").

may be true, in practice the limited amount of penalties available per violated metric and the dwindling number of active CLECs effectively limits the amount of money Verizon ever will pay out under the Pennsylvania PAP. For instance, there are no more than a handful of carriers leasing xDSL loops, especially with the demise of NorthPoint.

As part of resolving the structural separation proceeding, the Commission has proposed to Verizon that a new proceeding investigate the PAP and the adequacy of its remedies. Covad believes that that inquiry must take place and must result in stiffer PAP penalties before Verizon can proceed to the FCC with its 271 application.

CONCLUSION

For the foregoing reasons, the Commission should not recommend Verizon's 271 application to the FCC.

Respectfully submitted,

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Dated: April 18, 2001

20 *Structural Separation Order*, at 39.

CERTIFICATE OF SERVICE

I, S. Anna Sucin, do hereby certify that on this 11th day of July, 2001, copies of the foregoing Comments of Sprint Communications Company L.P. on Verizon Pennsylvania's 271 Application, CC Docket No. 01-138, will be hand-delivered, unless otherwise indicated below, to the following parties:

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